

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF THE MEETING
JANUARY 6, 2015**

**CALL TO
ORDER
6:08 pm**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were, Ole Netteberg, Mark Hash, and Roger Noble. Gina Klempel and Cal Dyck had excused absences. Erik Mack and Alex Hogle represented the Flathead County Planning & Zoning Office.

There were 2 people in the audience.

**APPROVAL OF
MINUTES
6:08 pm**

Noble motioned and Netteberg seconded to approve the December 2, 2014 minutes. The motion passed unanimously.

Hash made note for the representative in the audience there were three board members present. If they wished to postpone the hearing of their application to the next meeting now was the time to do so.

The representative did not elect to postpone the hearing of his application.

**ELECTION OF
OFFICERS
6:08 pm**

The board postponed election of officers to the next meeting which will be February 3, 2015.

**PUBLIC
COMMENT
(not related to
agenda items)
6:08 pm**

None.

**NICHOLAS AND
DIANE HANSEN
(FDV-14-01)
6:09pm**

A variance from certain requirements of the Flathead County Floodplain and Floodway Management Regulations (FCFR) has been requested by Nicholas and Diane Hansen related to the proposed installation of fill for the purpose of elevating a future residence in the 100-year Floodplain of the Flathead River at a location where a previous residence was destroyed by fire. The variance is requested because the existing garage and drainfield on each side of the homesite inhibit the ability to install the fill at least 15 feet beyond the structure in all directions as required per Section 5.03(L) FCFR. The subject property is located at 523

East Cottonwood Drive approximately 2.5 miles east of Kalispell.

STAFF REPORT Hogle reviewed Staff Report FDV-14-01 for the Board.

**BOARD
QUESTIONS** None.

**APPLICANT
PRESENTATION** Joe Matulevich, APEC Engineering, represented the applicant. The applicant had intended to attend the meeting however there were extenuating circumstances. He would be happy to answer any questions the board may have. The application was thorough so he would not burden the board with a presentation. He clarified the existing drain field was grandfathered for a three bedroom residence only. There was no other opportunity on the property for another system. It was imperative they maintained the existing drain field.

**BOARD
QUESTIONS** None.

**PUBLIC
COMMENT** None.

Hash and Hogle discussed comment the office had received from DNRC.

**STAFF
REBUTTAL** None.

**APPLICANT
REBUTTAL** None.

**STAFF
REBUTTAL** None.

**BOARD
DISCUSSION** Netteberg and Hogle discussed condition 5 where the excess materials would be located off site and the reason for the condition.

Noble and Netteberg did not have any issues with the application.

**MAIN MOTION
TO ADOPT
F.O.F.
(FDV-14-01)** Noble made a motion seconded by Netteberg to adopt staff report FDV-14-01 as findings-of-fact.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
ADOPT F.O.F.
(FDV-14-01)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

None.

**MAIN MOTION
TO APPROVE
(FDV-14-01)**

Noble made a motion seconded by Netteberg to approve FDV-14-01.

**BOARD
DISCUSSION**

None.

**ROLL CALL TO
APPROVE
(FDV-14-01)**

On a roll call vote the motion passed unanimously.

**MICHAEL AND
DEBBIE
THOMAS
(FZV-14-03)
6:24 pm**

Hash reiterated the number of members of the board present and necessary for approval. The representative who had joined the meeting late declined to postpone the hearing of the application.

A request by Michael & Debbie Thomas for a Zoning Variance to property within the Bigfork Zoning District and zoned RC-1 (Residential Cluster). The applicant is requesting a variance to Section 3.14.040(4), "Bulk and Dimensional Requirements", (Maximum Height), of the Flathead County Zoning Regulations. The property is located at 156 Bjork Drive.

STAFF REPORT

Mack reviewed FZV-14-03 for the board.

**BOARD
QUESTIONS**

Noble and Mack discussed what of the structure was considered in the elevation.

Mack continued with his staff report.

The board had no further questions.

**APPLICANT
PRESENTATION**

Mike Roessmam, 625 Three Eagle Lane, represented the applicant. He said there were credible arguments either way as to if the variance was needed. The reason for the variance was

the health and wellbeing of the structure long term. He went on to explain why he made the statement which included standing snow on the balcony, the visuals from neighboring houses in the area and the balcony was the only lake view from the house. He went over the changes which had been made on the building plan to help the proposed building be closer to the target height.

**PUBLIC
COMMENT**

None.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Hash said on the surface, the reason for the variance was small, but he knew criteria needed to be met. He asked Mack how to balance the criteria with what appeared to have minimal impact on the neighborhood.

Hash and Mack discussed the criteria, the purpose of the criteria and if the applicant would be able to add fill under the house to raise the elevation.

Noble said it looked like bedrock where the building site was proposed so it would require some sort of blasting for footings.

Hash and Mack discussed what criteria BLUAC followed when they struck several findings of fact from the staff report.

Netteberg and Mack discussed how BLUAC voted.

Netteberg, Hash and Mack discussed what criteria BLUAC was following to make their recommendation and what the board's responsibility was in order to grant a variance.

Noble agreed with Hash, the board's job was to review the application and follow the criteria. If they didn't, they would be setting a precedent.

The board and Mack discussed the difficulties with granting this variance, what the board was allowed to do and if it was possible to change the findings to support the application. They also discussed at length what happened if the variance was not granted and what the applicant's options were if the variance was not granted.

Hash recognized Roessmam and asked if he had any additional thoughts.

Roessmam said BLUAC had gone through the findings one by one and how they could be looked at both ways. He went through options which were not viable and the limitations of the building site. He felt every effort had been made to reduce the height of the structure to minimize the impact. He understood where the board was coming from, but the applicant's arguments were as valid as staff's.

Hash and Roessmam discussed if there was a way to lower the roof and if anything could be done from the front to the back. All that could have been done had been done because the applicant did not want to go through the process for a variance. They had hit a wall as far as options.

Netteberg said he knew George Gibson and he had probably done all he could to make the property come into compliance. When he had heard BLUAC had approved it, his mind shifted because normally neighborhood LUACs were stricter as to what went into their neighborhoods. He had been on several Board of Adjustments and they were a relief valve for situations such as this and where common sense could be used to finagle the findings of fact to be able to grant approval. Personally, he did not see a problem with granting a variance. These types of rooflines were becoming the new norm for the valley. His first thought was couldn't some fill be added to make the structure come into compliance. Then he realized the steepness of the slope and the similarities which resulted in troubles for Whitefish with the critical areas ordinance.

Hash, Netteberg and Roessmam discussed the actual living space of the home and outdoor living space.

Hash understood Netteberg's view and said the office tried very hard to make applications work for the applicants. He did not know how to make legitimate findings to support granting the variance.

The board and Mack discussed at length the criteria and findings and if it was possible to craft findings to support the application. They also discussed lots such as this one which were less desirable and the possibility of more of these variances coming through the process. They continued to discuss if it was possible

to craft alternate findings and the responsibilities of the owner when they purchased a piece of property.

Roessmam said it was difficult for the property owners to understand what the buildable footprint was of properties such as this and explained what the ideal way to proceed for a property owner was and he agreed that there would be more and more of these applications because of the difficulty of building on available lots.

Hash said they did not want to be unfair to people who had done their due diligence and built smaller homes to stay within compliance of the zoning regulations. He felt the adverse effect would be zero with granting the variance. What he was struggling with was how to maintain the integrity of the board and not rely on feel good decisions.

Netteberg said he did not like the finding which said they would be setting a precedent in granting the variance because it was conferring a special privilege not available to other property owners in the district. If they tossed these out randomly, it was setting a precedent, but in the same sense, that was why the board was there. The idea of a variance was to build right at the edge of the envelope.

Hash agreed the board had granted variances in the past which they wanted to make work.

Netteberg said he personally would like to approve the application. They would have to work pretty hard, but they could do it.

Noble asked Mack how many findings were inconsistent.

Mack said there were seven findings which would need to be rewritten and listed them.

Noble said it wasn't his job to rewrite seven findings of fact.

Hash said he agreed with Noble. Not that they would not take the time to rewrite the findings, but he did not think he could put in findings which would make it correct or true so that the application met the criteria necessary.

Roessmam asked Hash which findings he had problems with.

Hash said he had difficulty with the findings the Planning Office said did not meet the criteria.

Roessmam said the findings Hash had difficulty with were the findings the applicant disagreed with staff on.

Mack said not all of them.

Noble said they could take a stab at reworking the findings.

Hash asked Mack how he would change finding number one in order to be comfortable with it.

Mack said the findings were as he saw them and it would be difficult for him to go back and think of how he would rewrite them at this point.

Hash said he would not feel comfortable rewriting the findings which did not meet the criteria. He would entertain a motion at this time.

Both Netteberg and Noble declined to make a motion.

Hash clarified what he was asking for in a motion.

The board discussed possible motions and process.

The board and staff discussed options for the board to pursue at this juncture.

The board and Roessmam discussed the option of a continuation of discussion at the February 3, 2015 meeting.

The board continued to discuss the findings.

Roessmam said the wording in the application outlined a lot of what they were searching for right now as far as validation of the legitimacy of granting the variance. It was a simple proposition and at the end of the day, the structure would be built and be built looking like the plans before the board. It didn't make sense not to put the roof over, for all intents and purposes, a flat porch above living space. To deny a homeowner an opportunity to protect a structure they will be investing hundreds of

thousands of dollars in did not make sense to him. It made sense to him to have the variance.

Hash said all of the board members supported what Roessmam said but he did not come before them with a presentation of alternate findings of fact that would support his position.

Roessmam said he did in the application.

Hash said those were not working for the board. They sympathized with where he was coming from. The findings Roessmam presented in the application were addressed by Mack in the staff report. They would need different findings to make an approval work.

Roessmam said the client had done everything they could to minimize the impact to stay within conformity.

Hash said the board agreed there was minimal or zero impact to the neighborhood. He asked if there was a motion. If they weren't going to make a motion, they had to put it on the record.

The board discussed options of how to proceed.

Roessman asked to be recognized.

Hash declined.

The board continued to discuss options on how to proceed.

Hash recognized Roessman.

The board, Mack and Roessman discussed what options were and what would happen if the board decided to continue discussion to the next meeting date.

**MAIN MOTION
TO CONTINUE
DISCUSSION AT
FEBRUARY 3,
2015 MEETING
(FZV-14-03)**

Netteberg made a motion seconded by Noble to continue discussion of FZV-14-03 at the February 3, 2015 meeting.

**BOARD
DISCUSSION**

Hash said the board was struggling to make the application work, but Roessman had heard what they had said about the problems.

**ROLL CALL TO
CONTINUE
DISCUSSION AT
FEBRUARY 3,
2015 MEETING
(FZV-14-03)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION
7:15 pm**

Hash and Mack discussed the number of board members needed to have a vote to continue discussion to pass.

Hash thanked Mack for his work on the report and said sometimes it was beneficial for the applicant to hear limitations and process from staff.

The board and Mack discussed how the continuance would work.

Netteberg and Donna Valade, board secretary, discussed how absent board members would know what happened during the meeting so they could be informed for the February meeting.

Hash requested Mack confirm the process followed tonight was appropriate and the process for the next meeting.

The board and Mack discussed what was appropriate for the next meeting.

OLD BUSINESS

None.

NEW BUSINESS

Netteberg asked what was on the agenda for the February meeting.

Noble asked what the results were from a previous application presented by Alex Hogle.

Mack said he did not know.

ADJOURNMENT The meeting was adjourned at approximately 7:22 pm. on a motion by Netteberg. The next meeting will be held at 6:00 p.m. on February 3, 2015.

C. Mark Hash, Chairman

Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 2 / 3 / 15*